# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## SPECIAL CIVIL APPLICATION No. 2839 of 1993

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE AKIL KURESHI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the civil judge?

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**THAKKER NARROTAMDAS KALYANJI & ANR & 1 - Petitioner(s)**

**Versus**

**COLLECTOR,KUTCH & ANOTHER & 1 - Respondent(s)**

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**Appearance :**

MR SURESH M SHAH for Petitioner(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 1 - 2.

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**CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI**

**Date : 25/01/2006**

**ORAL JUDGMENT**

1. In the present petition the petitioners have challenged the orders passed by the State authorities regarding levy of conversion charge for converting the

land of the petitioners from agricultural to non-agricultural land. The petitioners own agricultural land bearing survey No. 323/2, 326/2, 307 and 309 at Madapar village, Taluka – Bhuj, District – Kutch. The petitioners wanted to convert these lands into non-agricultural land. They therefore, applied to the revenue authorities for the said purpose under the provisions of Bombay Land Revenue Code. After passing initial orders of remand and appeals, final order came to be passed by the Deputy Secretary (Appeals), Revenue Department, Government of Gujarat in June 1992. By the said order Revision Application filed by the petitioners was rejected and the order passed by the Collector was confirmed. The petitioners being aggrieved by the said order passed by the Deputy Secretary, have preferred the present petition.

2. The controversy involved in this petition is with respect to the rate at which the petitioners be asked to pay conversion charge under the Bombay Land Revenue Code. The case of the petitioners is that as per Section 67A of the Bombay Land Revenue Code conversion charge as applicable in Bhuj City cannot be charged from the petitioners. The case of the respondents is that the

land in question is within the radius of one Kilometer of revenue limits of Bhuj which has population of more than Fifty Thousand. Accordingly, the petitioners were asked to pay conversion charges as provided under the Bombay Land Revenue Code applicable to Bhuj town. The contentions of the petitioners in this regard are that the radius of one kilometer is to be seen from the municipal limits of Bhuj town and not from the revenue limits and in any case even considering the distance from the revenue limits, the lands of the petitioners are well outside the radius of one kilometer. The petitioners had produced certain maps before the Deputy Secretary to establish their contentions. In this regard it is the case of the petitioners that Deputy Secretary has relied on the findings of the D.I.L.R. and rejected the contentions of the petitioners regarding the distance of the land from the limit of Bhuj town. It is contended that such exercise was done *ex-parte* and behind the back of the petitioners. The maps produced by the petitioners were also got verified without participation of the petitioners. It is therefore, contended that if the petitioners were given sufficient opportunity by the Deputy Secretary, the petitioners could have established their claims. It is contended that whatever material

Deputy Secretary wanted to place reliance upon ought to have been disclosed to the petitioners.

3. Considering the factual and legal controversy arising, it would be appropriate to remand the proceedings to the Deputy Secretary for fresh consideration. For the said purpose the impugned order passed by the Deputy Secretary in June 1992 in the Revision Application filed by the petitioners produced at Annexure – I is quashed. Proceedings are remanded to the Deputy Secretary for fresh consideration and disposal in accordance with law. The petitioners will have opportunity to produce additional evidence if they so desire. The Deputy Secretary shall disclose to the petitioners any evidence or material, that the authority is likely to take into consideration. The Deputy Secretary shall decide the above factual controversy and all other contentions that may be raised before him. Till fresh order is passed by the Deputy Secretary in the remand proceedings, *status-quo* granted earlier by this Court shall continue.

4. All contentions of both sides are kept open.

5. With these directions and observations, the petition is disposed of. Rule made absolute to the limited extent. No order as to costs.

***[Akil Kureshi, J.]***

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